



**Orrick, Herrington & Sutcliffe LLP**

1000 Marsh Road  
Menlo Park, CA 94025-1015

+1 650 614 7400

orrick.com

Monte Cooper  
(650) 614-7375  
mcooper@orrick.com

March 20, 2017

Honorable Lucy H. Koh  
United States District Court  
Northern District of California  
San Jose Division  
280 South First Street, Courtroom 8  
San Jose, CA 95113

Re: *Facebook, Inc. v. Power Ventures, Inc., et al.*, Case No. 08-cv-5780-LHK (N.D. Cal.)

Dear Hon. Judge Koh:

Facebook, Inc. ("Facebook") seeks the Court's guidance with respect to some significant developments in this case, including non-compliance with the Court's order. We have communicated with Defendants about this noncompliance.

On February 15, 2017, the Court entered a Case Management Order (Dkt. No. 410) requiring Defendants Power Ventures, Inc. ("Power") and Steven Vachani to pay Facebook \$39,796.73 in discovery sanctions on or before March 15, 2017. This sanctions award was affirmed by the Ninth Circuit and no further appeals were pending. The Court also entered a briefing schedule that directed the parties to present their positions as to what amount of amended damages and other relief Facebook should receive as a result of the Ninth Circuit affirming that Defendants violated the Computer Fraud and Abuse Act ("CFAA") and California Penal Code Section 502. *Id.* In accordance with that schedule, Facebook filed its Supplemental Remedies Brief (Dkt. No. 416) on March 8, 2017, and Defendants' response was ordered to be filed by April 12, 2017. *See* Dkt. No. 410.

Both Defendants failed to pay Facebook the \$39,796.73 by the March 15 deadline. Only after Facebook contacted Defendants to inquire about the missing payment did Power, for the first time on March 20, 2017, claim through Mr. Vachani that it missed the Court-ordered deadline because it supposedly does not have the money. From its communication, it appears that Power knows it has not complied but has chosen not to seek any court relief. For that reason, Power is currently in violation of the Court order. The effect of Mr. Vachani's noncompliance is less clear, as Mr. Vachani filed for bankruptcy protection long ago. *In re Vachani*, Case No. 12-47150 RLE (Bankr.



Hon. Lucy Koh  
March 14, 2017  
Page 2

N.D. Cal.)). Bankruptcy Judge Efremsky has not yet ruled on whether Mr. Vachani's monetary obligations to Facebook will be discharged in his bankruptcy.

At the same time, Power and Mr. Vachani (represented by new appellate counsel) jointly filed a Petition for Certiorari with the United States Supreme Court in this case. *See* Dkt. No. 418. Through its new counsel, Defendants informed Facebook that due to some unspecified "urgent personal emergency," Power has been unable "for several weeks" to contact its attorney concerning these District Court proceedings. *See* Ex. A attached, March 17, 2017 email from Thomas H. Lee. Facebook has no independent knowledge of such issues, and believes they need to be raised with the Court by the Defendants. Nevertheless, Facebook did receive a communication from Mr. Vachani today outlining Defendants' position. We are attaching that communication as Ex. B to this letter. *See* Ex. B, attached, March 20, 2017 email from Steve Vachani. As Defendants have often failed to respond to Facebook and often have various excuses for not interacting with Facebook with respect to this case, Facebook is concerned that Defendants' failure is another delay tactic.

Since the matters raised in this letter reflect noncompliance with a Court order (including potential contempt) and several case management issues, Facebook asks your Honor to advise the parties how the Court wishes to proceed.

Very truly yours,

*/s/ Monte Cooper*

Monte Cooper

Enclosures

cc: Amy Sommer Anderson, Esq.  
Thomas H. Lee, Esq.  
Steven Vachani